

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3366/1dn
MDK:med:rs

December 9, 2011

Rep. Hulseby:

Please be aware that this bill could be subject to a challenge that it violates the commerce clause of the U.S. Constitution, which authorizes Congress to regulate commerce with foreign nations. Under the “dormant foreign affairs doctrine,” courts have considered the extent to which the commerce clause’s grant of power to Congress precludes a state from regulating commerce with foreign nations. However, as one commentator has noted, recent U.S. Supreme Court decisions have “created some confusion over the status of, and test to be used under, the dormant foreign affairs doctrine.” M. Schaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 Seton Hall L. Review 201, 318 (2011). The same commentator has also noted that restrictions on states under the foreign affairs doctrine have been increasingly criticized and questioned. 41 Seton Hall L. Review at 316. If you want me to research this issue further, please let me know.

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